

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH GUY JUENEMANN, JR.,

Defendant-Appellant.

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UNPUBLISHED

March 1, 2002

No. 221047

Montmorency Circuit Court

LC No. 98-001111-FC

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals by right from his jury conviction for first-degree premeditated murder, MCL 750.316(1)(a), for which he was sentenced to life imprisonment. We affirm.

I.

Defendant first contends that the trial court improperly admitted evidence of threats defendant made toward the decedent – his ex-wife. We disagree. The decision to admit or exclude evidence is within the trial court’s discretion, and reversal is warranted only where there is a clear abuse of that discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

A defendant’s general denial places all elements of the charge at issue. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). Defendant’s theory of defense – that the prosecution could not prove his involvement in his former wife’s homicide – placed the identity of the murderer at issue. *Id.*

A defendant’s statement of general intent is not an *act* for MRE 404(b) purposes. *People v Goddard*, 429 Mich 505, 514-515 (Levin, J.), 523 (Riley, C.J., concurring in part and dissenting in part); 418 NW2d 881 (1988); *People v Milton*, 186 Mich App 574, 576; 465 NW2d 371 (1990), remanded on other grounds 438 Mich 852; 473 NW2d 310 (1991). Following the *Goddard* Court’s designation of a party’s statement of general intent as an admission under MRE 801(d)(2), this Court in *Milton*, *supra*, applied the standard test of determining the admissibility of evidence – whether the probative value of relevant evidence is substantially outweighed by the danger of unfair prejudice to the defendant if the evidence is admitted. MRE 401; MRE 403; *Milton*, *supra* at 576; *Goddard*, *supra* at 514-515 (Levin, J.). Where the identity of the

perpetrator is at issue at trial, evidence of the defendant's previous threats may be admitted for the purpose of establishing identity. *Milton, supra* at 576-577.

Threat evidence is also properly admissible to show a defendant's continuing pattern of behavior, even where the defendant denies participation in the crime and the evidence is primarily circumstantial. *People v Miller (After Remand)*, 211 Mich App 30, 38-39; 535 NW2d 518 (1995). Remoteness in time to the murder and any dissimilar characteristics between the threats and the homicide bear on the evidence's legal relevance, not on its logical relevance. *People v DeRushia*, 109 Mich App 419, 426-427; 311 NW2d 374 (1981). We are convinced that the threat evidence was properly admitted under MRE 401 and MRE 403 because it tended to make more or less probable the existence of disputed and material facts that were essential to the jury's verdict and because the probative value of defendant's previous threats substantially outweighed the danger to defendant of unfair prejudice.

## II.

Defendant next contends that a slight variation in the court's wording of the first and second cautionary instructions resulted in the jury's receipt of inconsistent instructions – the second of which was clearly erroneous. This Court reviews claims of instructional error de novo. *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998).

In the present case, the trial court first delivered a limiting instruction to the jury immediately before the introduction of most of the threat evidence. The court stated that the threat evidence was admitted for the limited purpose of proving defendant's motive, premeditated intent, and deliberation in murdering the decedent. Specifically, the court instructed:

[T]he People are calling some witnesses now, and actually I guess we probably have had at least one witness already from part of their testimony was relative to – was to threats, what we have been calling threat evidence. In other words, [the prosecution] presented evidence that the Defendant made certain threats against Nancy Juenemann because of his dissatisfaction with the property settlement that arose out of the divorce.

Now, you can use this threat evidence only for a limited purpose. You may properly use it as evidence to prove that the Defendant intended to kill Nancy Juenemann and to prove that such intent was premeditated. You may use it also to show that the killing was deliberate, as well as to show the Defendant possessed a motive to kill Nancy Juenemann. *You must find, however, that Defendant caused the death of Nancy Juenemann; that is, Nancy Juenemann died as a result of gunshot wounds inflicted by Defendant from evidence that is independent of the threat evidence.* [Emphasis added.]

Subsequently, after defendant presented his case, the court informed the parties that it might change in its delivery of final instructions to the jury the wording of the limiting instruction previously given during the trial. Defense counsel relied on the previously given limiting

instruction when he presented his closing argument. Thereafter, the court stated that it was changing the version of the limiting instruction previously given, and defense counsel objected to any change in the form of the first instruction. The trial court ultimately delivered a revised version of its first limiting instruction in its charge to the jury before deliberations:

The People have presented evidence that Defendant made certain threats against the victim, Nancy Juenemann, because of his dissatisfaction with the property settlement of their divorce. *You can use this threat evidence only for a limited purpose.* Namely, you may properly use it as evidence to prove that the Defendant intended to kill Nancy Juenemann, and to prove that such intent was premeditated. You may use it also to show that the killing was deliberate, as well as to show the Defendant possessed a motive to kill Nancy Juenemann. *The threat evidence, when used for its limited purpose and considered with the rest of the evidence in this case, must convince you of Defendant's guilt beyond a reasonable doubt before you can find – or before you can return a verdict of guilty.* [Emphasis added.]

We first conclude that the trial court erred in giving the first limiting instruction. MRE 105 requires a trial court on request to issue a limiting instruction when evidence that is admissible for one purpose but inadmissible for other purposes is presented to a jury. Our Supreme Court has eliminated the requirement that evidence independent of a defendant's confession be presented to prove premeditation or deliberation where the evidence, without the confession, establishes only that the defendant is guilty of second-degree murder. *People v Williams*, 422 Mich 381, 391-392; 373 NW2d 567 (1985). Even before the Supreme Court's decision in *Williams*, this Court distinguished between the independent evidence requirement as it related to a defendant's confession and the same requirement as it related to a defendant's previous threats to kill the decedent. *People v Johnson*, 93 Mich App 667, 672-673; 287 NW2d 311 (1979). A defendant's statement that does not in and of itself prove the defendant's guilt is an admission that may properly be used against him in the absence of independent proof of premeditation and deliberation. *Id.* at 673.

Although the trial court erred in giving the first limiting instruction, the court's second instruction properly charged the jury regarding the permissible use of the threat evidence in light of the other evidence presented at trial. However, the fact that the trial judge correctly instructed the jury before deliberations is not the issue. The problem in this case is that the defendant relied on the first limiting instruction in his closing argument to the jury and perhaps in the way he presented his defense. In *People v Clark*, 453 Mich 572, 581, 591-592 (Mallett, J.), 595 (Cavanagh, J.), 595-596 (Riley, J.); 556 NW2d 820 (1996), our Supreme Court found error where the trial court changed the content of a jury instruction after the defendant had relied on the instruction during closing argument to the jury. However, although the Court in *Clark* granted a new trial, the Court stated that "not every instance of this type of instructional error will require reversal" and that "reversal is required only if the error was prejudicial." *Id.* at 587-588.

In determining whether instant defendant is entitled to a reversal of his conviction and the grant of a new trial because of the instructional error in this case, we must review the preserved,

nonconstitutional error at issue under the “more probable than not” standard. *People v Lukity*, 460 Mich 484, 495, 596 NW2d 607 (1999). In *Lukity, supra* at 495-496, our Supreme Court stated that “a preserved, nonconstitutional error is not a ground for reversal unless ‘after an examination of the entire cause, it shall affirmatively appear’ that it is more probable than not that the error was outcome determinative.” After reviewing the entire record in this case, we are not convinced that it is more probable than not that the error was outcome determinative. The prosecution presented sufficient evidence to prove defendant guilty of his ex-wife’s murder. We are confident that the instructional error in this case did not affect the jury’s final outcome. Cf. *Clark, supra* at 594.

### III.

Defendant also asserts that the trial court erred in failing to grant his motion for directed verdict because the prosecution failed to prove beyond a reasonable doubt that defendant was involved in the murder. We disagree. Appellate review of a trial court’s denial of a defendant’s motion for directed verdict is de novo. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). The evidence is viewed in the light most favorable to the prosecution to determine whether a rational trier of fact would be justified in concluding that all elements of the crime could be proven beyond a reasonable doubt by the evidence presented at the time of the motion. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *Aldrich, supra* at 122.

A first-degree murder conviction requires the prosecution to prove that a defendant intended to kill the victim and that the killing was premeditated and deliberate. *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998), cert den 528 US 957; 120 S Ct 387; 145 L Ed 2d 302 (1999). Circumstantial evidence and all reasonable inferences arising from it may provide the proof necessary to satisfy the elements of a crime. *Id.* at 371.

Premeditation may be inferred from circumstantial evidence, including evidence of the following factors: (1) the previous relationship between the defendant and the victim; (2) the defendant’s actions before the victim was killed; (3) the circumstances of the homicide itself; and (4) the defendant’s conduct after the homicide. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). The prosecution need not disprove every theory that might support a defendant’s innocence; the prosecution is required only to prove its theory of the crime beyond a reasonable doubt in light of any contradictory evidence presented by the defendant. *Marsack, supra* at 380. Defendant’s intent to kill his former wife may be inferred from the facts and circumstances surrounding the killing, including the type of weapon used and the method of injury. *People v Daniels*, 163 Mich App 703, 706; 415 NW2d 282 (1987).

Our review of the record shows that the prosecution presented sufficient evidence to prove defendant’s involvement in his former wife’s murder, and the evidence supported the jury’s required finding of guilt beyond a reasonable doubt with regard to each element of first-

degree premeditated murder. Thus, the trial court did not err when it denied defendant's motion for directed verdict.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Jane E. Markey